

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and)	
STEINER ASSOCIATES, LLC,)	
)	
Plaintiffs,)	Civil Action No. 21-CV-11181-DPW
)	
v.)	ORAL ARGUMENT REQUESTED
)	
EBAY INC., et al.,)	
)	
Defendants.)	
)	

MOTION TO DISMISS CROSS-COMPLAINT OF DEFENDANT JIM BAUGH

Defendant/Crossclaim-Defendant eBay Inc. (“eBay”) hereby moves, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss Defendant/Crossclaim-Plaintiff Jim Baugh’s Cross-Complaint. As grounds for this motion, eBay states as follows:

1. On June 11, 2020, Baugh was charged in a federal criminal case in this District, *United States v. Baugh, et al.*, No. 20-cr-10263-PBS. On April 25, 2022, Baugh pleaded guilty to all nine felony counts in his indictment. The same criminal conduct to which Baugh pleaded guilty forms the basis for the civil complaint in this matter. *See* Dkt. 110 (“Cross-Compl.”) ¶ 2.

2. Baugh filed his Cross-Complaint on February 4, 2022. In his Cross-Complaint, Baugh asserts that, pursuant to California Labor Code § 2802(a), he is entitled to indemnification for all his expenses, including fees, costs, and any judgments, associated with the civil and criminal matters.

3. As a matter of law, a Section 2802(a) claim must be dismissed if an employee knew his conduct to be unlawful at the time he performed it. Accordingly, Baugh's Cross-Complaint

fails because Baugh acted unlawfully, and by pleading guilty to multiple specific intent crimes, Baugh has conceded that he was aware of the unlawfulness of his actions.

4. Moreover, Baugh's Cross-Complaint fails because he fails to adequately plead that he did not believe his conduct was unlawful, offering only a conclusory allegation parroting the statutory language.

5. The grounds for this motion are further set forth in eBay's accompanying memorandum of law, which eBay incorporates fully herein. eBay also incorporates herein the accompanying Declaration of Kathryn L. Alessi in Support of Motion to Dismiss.

WHEREFORE, eBay respectfully requests that the Court dismiss Baugh's Cross-Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure with prejudice and without leave to amend.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), eBay respectfully requests oral argument in connection with this Motion to Dismiss. The motion raises significant questions about whether the Cross-Complaint has adequately stated a claim upon which relief can be granted. Oral argument will allow the parties to address this issue fully and to respond to any questions the Court may have.

Dated: May 26, 2022

/s/ Jack W. Pirozzolo

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Counsel for eBay Inc.

CERTIFICATION PURSUANT TO L.R. 7.1(a)(2)

I, Jack W. Pirozzolo, counsel for eBay, hereby certify that, in accordance with Local Rule 7.1(a)(2), I have conferred with counsel for Defendant Jim Baugh and have attempted in good faith to resolve or narrow the issues subject to this Motion. Defendant Baugh's counsel stated he opposes this Motion.

Dated: May 26, 2022

/s/ Jack W. Pirozzolo
Jack W. Pirozzolo

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2022, this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: May 26, 2022

/s/ Jack W. Pirozzolo
Jack W. Pirozzolo